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Sanford Buckles

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**SANFORD BUCKLES on behalf
of himself and others similarly
situated,**

Plaintiff,

v.

**GREEN TREE SERVICING,
LLC, and WALTER
INVESTMENT MANAGEMENT
CORPORATION**

Defendants.

Case No.: 2:15-cv-01581-GMN-CWH

**FIRST AMENDED COMPLAINT
FOR CLASS ACTION COMPLAINT
FOR DAMAGES PURSUANT TO
NRS 200.600 ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. SANFORD BUCKLES (“Plaintiff”) brings this class action for damages,
3 injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of GREEN TREE SERVICING, LLC
5 (“Green Tree”) and WALTER INVESTMENT MANAGEMENT
6 CORPORATION (“Walter Investment”), jointly as “Defendants” in
7 willfully employing and/or causing to be employed certain recording
8 equipment in order to record to the telephone conversations of Plaintiff
9 without the knowledge or consent of Plaintiff, in violation of Nevada
10 Revised Statute (“NRS”) 200.600 *et seq.*, thereby invading Plaintiff’s
11 privacy. Plaintiff alleges as follows upon personal knowledge as to his own
12 acts and experiences, and, as to all other matters, upon information and
13 belief, including the investigation conducted by his attorneys.
14
15 2. NRS 200.620 prohibits one party to a telephone call from intentionally
16 recording the same conversation without the knowledge or consent of the
17 other while the person being recorded is on a telephone. There is no
18 requirement under NRS 200.620 that the communication be confidential,
19 only that it not be for public use. Plaintiff alleges that Defendants continue
20 to violate NRS 200.620 by impermissibly recording its telephone
21 conversations with Nevada residents.
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1 3. While many violations are described below with specificity, this Complaint
2 alleges violations of the statute cited in its entirety.

3 4. Unless otherwise stated, all the conduct engaged in by Defendants took
4 place in Nevada.
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6 5. Any violations by Defendants were knowing, willful, and intentional, and
7 Defendants did not maintain procedures reasonably adapted to avoid any
8 such violation.
9

10 6. Unless otherwise indicated, the use of Defendants' name in this Complaint
11 includes all agents, employees, officers, members, directors, heirs,
12 successors, assigns, principals, trustees, sureties, subrogees, representatives,
13 and insurers of Defendants' named.
14

15 **JURISDICTION AND VENUE**

16 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff is a
17 resident of the state of Nevada, seeking relief on behalf of a class, which will
18 result in at least one class member belonging to a different state than that of
19 the Defendant. Green Tree is a Delaware Limited Liability Company with a
20 principal place of business in Minnesota. Green Tree is notably listed as a
21 foreign limited-liability company with the Nevada Secretary of State,
22 carrying Nevada Business ID "NV20031086723". Walter Investment has a
23 principal place of business in Florida. Plaintiff also seeks the greater of
24 statutory damages of \$1,000 per violation per day for the three year statute
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1 of limitations pursuant to NRS 200.690 and NRS 11.190, which, when
2 aggregated among a proposed class number in the tens of thousands, exceeds
3 the \$5,000,000 threshold for federal court jurisdiction. Therefore, both
4 diversity jurisdiction and the damages threshold under the Class Action
5 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
6

- 7 8. Venue is proper in the United States District Court for the District of Nevada
8 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark
9 County, the State of Nevada and Defendants are subject to personal
10 jurisdiction in the County of Clark, State of Nevada as they conduct business
11 there, and the conduct giving rise to this action occurred in Nevada. 28
12 U.S.C. § 1391(b)(2). Further, Green Tree is registered with the Nevada
13 Secretary of State with a registered agent of service in Las Vegas, Nevada.
14
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16
17 **PARTIES**

- 18 9. Plaintiff is, and at all times mentioned herein was, a natural person residing
19 in the County of Clark, State of Nevada.
20
21 10. Green Tree is, and at all times mentioned herein was, a limited liability
22 corporation operating in Nevada, whose primary address is in St. Paul,
23 Minnesota. Green Tree is a wholly owned subsidiary of Walter Investment
24 Corporation, whose principal place of business is in Florida.
25
26 11. Green Tree is a mortgage servicer and debt collector, offering post-default
27 debt collection services on debts allegedly owed by consumers.
28

1 12. Green Tree has a policy and practice of recording telephone conversations
2 with the public, including Nevada residents. Green Tree's employees and
3 agents are directed, trained and instructed to, and do, record, telephone
4 conversations with the public, including Nevada residents.
5

6 13. Green Tree was acting as the agent for Walter Investment, the principal, at
7 all times relevant. In this capacity, Green Tree was authorized to act on
8 behalf of Walter Investment.
9

10 14. At a minimum, Green Tree maintained apparent authority to act on behalf of
11 Walter Investment, since Plaintiff reasonably believed that an agency
12 relationship existed between Defendants, and this reasonable belief was
13 traceable to a manifestation of Defendants, whose websites both clarify their
14 relationship.
15

16 15. Walter Investment knowingly accepted the benefits of the violations alleged
17 herein by receiving compensation from consumers from whom Walter
18 Investment's agents, Green Tree serviced loans and collected debts on behalf
19 of Walter Investments.
20
21

22 **FACTUAL ALLEGATIONS**

23 16. Beginning in and around early 2013, Green Tree had numerous telephone
24 conversations with Plaintiff regarding a home loan modification and debt
25 collection.
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1 17. Over a span of months in 2013 and continuing into 2014, Plaintiff and Green
2 Tree discussed a home loan modification for Plaintiff's home in Las Vegas.
3 During this time, Plaintiff and Green Tree had at least five (5) telephone
4 communications.
5

6 18. At no time during these telephonic communications did Green Tree advise
7 Plaintiff that Green Tree was recording the conversation.
8

9 19. At no time during any telephonic conversations did Plaintiff give consent for
10 the telephone call with Green Tree to be monitored, recorded and/or
11 eavesdropped on.
12

13 20. Plaintiff had no reasonable expectation that any part of the telephone
14 conversations with Green Tree would be monitored, recorded and/or
15 eavesdropped upon because Green Tree simply did not disclose that the calls
16 were recorded, despite the fact that recording every telephone call is Green
17 Tree's policy.
18

19 21. Plaintiff did not hear intermittent beeps during the call(s) that may have
20 alerted Plaintiff to the fact Green Tree was recording the call; nor did Green
21 Tree cause intermittent beeps to be heard, which could have altered the
22 Plaintiff to the calls being recorded.
23

24 22. Plaintiff was shocked to discover Green Tree recorded, monitored and/or
25 eavesdropped upon the calls without Plaintiff's knowledge or consent.
26
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1 23. During these conversations with Green Tree, Plaintiff discussed highly
2 personal and private information that Plaintiff had not openly discussed with
3 others, including Plaintiff's financial status.
4

5 24. Plaintiff had no reasonable expectation that Plaintiff's telephone
6 conversations with Green Tree would be recorded due to the private subject
7 matter being discussed.
8

9 25. During the relevant time period, Green Tree had a policy and a practice of
10 recording and/or monitoring telephone conversations with consumers.
11 Green Tree's employees and agents are directed, trained and instructed to,
12 and do, record, monitor, and/or eavesdrop upon telephone conversations
13 with the public, including Plaintiff and other Nevada residents.
14

15 26. During the relevant time period, all of Green Tree's calls to the public,
16 including those made to Nevada residents, were recorded, monitored, and/or
17 eavesdropped upon without the knowledge or consent of the public,
18 including Plaintiff and other Nevada residents.
19

20 27. During the relevant time period, all of Green Tree's outbound calls to the
21 public, including those made to Nevada residents, were recorded without the
22 knowledge or consent of the public, including Plaintiff and other Nevada
23 residents.
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1 28. Green Tree's conduct alleged herein constitutes violations of the right to
2 privacy of the public, including Plaintiff and other Nevada residents, and
3 NRS 200 *et seq.*
4

5 29. Green Tree concealed from Plaintiff and similarly situated Nevada residents
6 that Green Tree was recording the telephone calls between itself and
7 Plaintiff and other similarly situated Nevada, which calls were initiated by
8 Green Tree.
9

10 30. Green Tree concealed the fact that it was recording the aforementioned
11 phone call/s to create the false impression that calls were not being recorded.
12 Green Tree provided no warning or other disclaimers that the phone calls
13 were, or even may, be recorded.
14

15 31. Green Tree recorded the conversations with Plaintiff without obtaining
16 Plaintiff's consent, causing harm and damage to Plaintiff. At no time during
17 the telephone calls did Plaintiff give consent, whether express or implied, for
18 the telephone conversations to be recorded.
19
20

21 32. Reasonable Nevada residents expect that their telephone communications
22 are not being recorded in the absence of a call recording advisement of some
23 kind at the outset of the telephone call/s.
24

25 33. The calls Green Tree made to Plaintiff were not for emergency purposes.

26 **ACCRUAL OF RIGHTS TO PRIVACY CLAIMS, CONTINUING**
27 **VIOLATION, EQUITABLE TOLLING, AND**
28 **FRAUDULENT CONCEALMENT**

1 34. Plaintiff did not discover, and could not discover through the exercise of
2 reasonable diligence, the fact that Green Tree was recording the phone calls
3 it made to Plaintiff and members of the Nevada Class without their
4 knowledge or consent.
5

6 35. Green Tree concealed from Plaintiff and members of the Nevada Class that
7 it was recording the telephone calls between itself and Plaintiff or other
8 members of the Nevada Class.
9

10 36. Green Tree concealed the fact that it was recording the aforementioned
11 phone calls to create the false impression in the minds of Plaintiff and
12 members of the Nevada Class that they were not being recorded. At the
13 outset of the phone calls there was no warning that the phone calls were, or
14 even may, be recorded. Such warnings are ubiquitous today.
15
16

17 37. Plaintiff is justified in not bringing the claim earlier based on Green Tree's
18 failure to inform Plaintiff and other members of the Nevada Class that the
19 phone calls were being recorded as Plaintiff and his counsel were unaware
20 that Green Tree's recorded telephonic communications with Plaintiff until
21 June 2015.
22

23 CLASS ALLEGATIONS

24

25 38. Plaintiff brings this action on behalf of himself and on behalf of all others
26 similarly situated ("The Class").
27
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1 39. Plaintiff represents, and is a member of, “The Class” defined as follows:

2 “All persons in Nevada whose inbound and outbound telephone
3 conversations were monitored, recorded, and/or eavesdropped upon without
4 their consent by Defendants within three (3) years prior to the filing of the
5 original Complaint in this action.”
6

7 40. Defendants, and their employees and agents are excluded from The Class.

8 Plaintiff does not know the number of members in The Class, but believes
9 this number to be in the tens of thousands, if not more. Thus, this matter
10 should be certified as a Class action to assist in the expeditious litigation of
11 this matter.
12

13 41. Plaintiff reserves the right to expand The Class definition to seek recovery
14 on behalf of additional persons as warranted as facts are learned in further
15 investigation and discovery.
16

17 42. The joinder of The Class members is impractical and the disposition of their
18 claims in the Class action will provide substantial benefits both to the parties
19 and to the Court. The Class can be identified through Defendants’ records.
20

21 43. There is a well-defined community of interest in the questions of law and
22 fact involved affecting the parties to be represented. The questions of law
23 and fact to The Class predominate over questions which may affect
24 individual Class members, including the following:
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- a. Whether Defendants have or had a policy of recording, and/or eavesdropping upon and/or monitoring incoming and/or outgoing calls;
- b. Whether Defendants disclosed to callers and/or obtained their consent that their incoming and/or outgoing telephone conversations were being recorded, eavesdropped upon and/or monitored;
- c. Whether Defendants' policy of recording, eavesdropping upon and/or monitoring incoming and/or outgoing calls constituted a violation of NRS 200.600 *et seq.*;
- d. Whether Plaintiff and The Class was damaged thereby, and the extent of damages for such violations; and
- e. Whether Defendants should be enjoined from engaging in such conduct in the future.

44. Plaintiff is asserting claims that are typical of The Class because every other member of The Class, like Plaintiff, was exposed to virtually identical conduct and are entitled to the greater of statutory damages of \$100.00 per day or \$1,000 per violation pursuant to NRS 200.690.

45. Plaintiff will fairly and adequately represent and protect the interests of The Class in that Plaintiff has no interest adverse to any member of The Class. Plaintiff has retained counsel experienced in handling class action claims.

46. Plaintiff and the members of The Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, The Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy

1 and Defendants will likely continue such illegal conduct. Because of the
2 size of the individual Class member's claims, few, if any, Class members
3 could afford to seek legal redress for the wrongs complained of herein.
4

5 47. A class action is a superior method for the fair and efficient adjudication of
6 this controversy. Class-wide damages are essential to induce Defendants to
7 comply with Nevada law. The interest of The Class members in individually
8 controlling the prosecution of separate claims against Defendants is small
9 because the maximum statutory damages in an individual action are
10 minimal. Management of these claims is likely to present significantly
11 fewer difficulties than those presented in many class claims.
12

13
14 48. Defendants have acted on grounds generally applicable to The Class, thereby
15 making appropriate final injunctive relief and corresponding declaratory
16 relief with respect to The Class as a whole.
17

18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF NEVADA REVISED STATUTE 200.620**

20 49. Plaintiff incorporates by reference all of the above paragraphs of this
21 Complaint as though fully stated herein.
22

23 50. NRS 200.620 prohibits one party to a telephone call from intentionally
24 recording the conversation without the knowledge or consent of the other
25 party. NRS 200.620 is violated the moment the recording is made without
26 the consent of all parties thereto, regardless of whether it is subsequently
27 disclosed that the telephone call was recorded. The only intent required by
28

1 NRS 200.620 is that the act of recording itself be done intentionally. There
2 is no requisite intent on behalf of the party doing the recording.

3 51. Defendants employed and/or caused to be employed certain eavesdropping,
4 recording, and listening equipment on the telephone lines of all employees,
5 officers, directors, and managers of Defendants. All these devices were
6 maintained and utilized to overhear, record, and listen to each and every
7 incoming and outgoing telephone conversation over said telephone lines.
8

9
10 52. This listening, recording, and/or eavesdropping equipment was used to
11 record, monitor, or listen to the telephone conversations between Defendants
12 and Plaintiff and/or the members of The Class, all in violation of NRS
13 200.620.
14

15 53. Based on the foregoing, Plaintiff and the members of The Class are entitled
16 to, and below herein do pray for, statutory remedies and damages, including
17 but not limited to, those set forth in NRS 200.690.
18

19 **PRAYER FOR RELIEF**

20 Plaintiff respectfully requests the Court grant Plaintiff the following relief
21 against Defendants:
22

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF NRS 200.600 ET SEQ.**

- 25 • an award of the greater of statutory damages of \$100.00 per day or
26 \$1,000.00 to each named Plaintiff and member of the Class, pursuant to
27 NRS 200.690(1)(b)(1) against Defendants;
28

- an award of punitive damages pursuant to NRS 200.690(1)(b)(2), against Defendants;
- an award of costs of litigation and reasonable attorney's fees, pursuant to NRS 200.690(1)(b)(3), against Defendants; and
- any other relief the Court may deem just and proper.

TRIAL BY JURY

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 7, 2014

Respectfully submitted,

BY: /s/ DANNY J. HOREN

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